

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION



UNITED STATES OF AMERICA

v.

JOHN FOGG,

Defendant.

Action No. 3:05-CR-30

ORDER

THIS MATTER is before the Court on Defendant John Fogg's Motion for a Sentence Reduction, pursuant to 18 U.S.C. § 3582(c)(2) in light of Amendment 750 to the United States Sentencing Guidelines ("Motion"). (Dock. No. 48.)

On March 21 2005, Defendant pled guilty to distribution of a cocaine base in violation of 21 U.S.C. §§ 841(a)(1) & 841(b)(1)(B). On June 20, 2005, based on a prior drug distribution conviction,¹ Defendant was sentenced to a statutory mandatory minimum sentence of one hundred and twenty (120) months. Previously, Defendant sought relief pursuant to prior Amendments 706 and 711. (Dock. No. 24.) The prior motion and the request for reconsideration were denied (Dock. Nos. 29 & 31), and the denials were subsequently affirmed by the United States Court of Appeals for the Fourth Circuit. *United States v. Fogg*, 369 F. App'x 443 (4th Cir. 2010). Defendant now brings this Motion seeking relief pursuant to Amendment 750.

Although Defendant's amended guideline range is 37 to 46 months, Defendant is subject to the statutory mandatory minimum of 120 months and is consequently ineligible for relief under Amendment 750. *See* U.S.S.G. §§ 5G1.1(a) & (b); U.S.S.G. § 1B1.10, cmt. n.1(A) ("[A] reduction in the defendant's term of imprisonment is not authorized under 18 U.S.C. § 3582(c)(2) and is not consistent with this policy statement . . . [if] the amendment does not have the effect of lowering the

¹ In July 18, 1995, Defendant was sentenced for felony drug distribution.

defendant's applicable guideline range because of the operation of another guideline or statutory provision (e.g., a statutory minimum term of imprisonment).") Therefore, Defendant's Motion is DENIED.

Defendant may appeal this Order by filing a notice of appeal in the Clerk's Office of this Court within ten (10) days of the date of this Order. See Fed. R. App. P. 4(b)(1)(A).

Let the Clerk send a copy of this Order to the United States Probation Office, Richmond Division; the United States Attorney's Office; and all other parties of record.

It is SO ORDERED.

/s/
James R. Spencer
United States District Judge

ENTERED this 6 day of January 2012.
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